D.B.SPECIAL APPEAL (WRIT) NO. 137/05
(Surja Ram & Ors. Vs. State of Raj. & Ors.)

Date : 26.10.2006

HON'BLE MR. RAJESH BALIA,J.
HON'BLE MR. GOPAL KRISHAN VYAS,J.

Mr. Varun Goyal, for the appellant.
Mr. N.L.Joshi, for the respondents.

Having heard learned counsel for the parties. We are of the opinion that no case is made out for interfering in the order passed by learned Single Judge dismissing the writ petition filed by the appellant on the ground of gross latches.

Petitioner filed the writ petition No. 4330/04 DR(J) on 28.7.88 with multiple defects which were not attended to by the petitioner for almost five months.

The petitioner had challenged the order dated 16.2.65, certified copy which was not plaed on record. It was urged before learned Single Judge that petition does not challange the order dated 16.2.65 but is only refering the same for explaning the facts and sought dispensation of filing the certified copy of the order. However, it is clear that in the fact in

first instance petitioner preferred a writ petition alleging that order dt. 16.2.65 was not given effect to 20 years and when it was sought to be implemented after 20 years he resisted the same and filed writ petition to challange the implementation of said order. The writ petition was dismissed on 9.1.96 for want of challange to basic order sought to be implemented.

Taking cue from the above decision the petitioner filed an appeal to challange order dated 13.2.65 before Revenue Appellate Authority after 32 years. The Revenue Appellate Authority allowed the application to condone delay. But the Board of Revenue on Revision set aside said order condoning delay and dismissed the appeal.

The chequered history of the case shows that vide order Ex.1 dated 16.2.65 the existing Khala situated at stone parellal to the Murraba No. 129 was shifted to stone 130 by irrigation department. For that reason it was decided to change the way also. Therefore the existing way which was situated through Murraba No. 130/295 to 130/302 was claimed and new way was sanctioned through land of Murraba No.128/299 to 128/301, 125/297 to 129/297, 125,299 to 129/299, 126/302

to 126/303. This order remained unchallanged untill 1997. Notwithstanding the sanction for the change of way ordered on 16.2.65, the same was not entered into the land record when this was brought to the notice of the contempt Court by the concerned officer, by order dated 14.9.87 the mutation was carried out in terms of order 16.2.65. After mutation was made, an application was moved by the appellant for cancelling mutation which was recalled by SDM, Hanumangarh vide his order dated 28.7.88.

The order of SDM, Hanumangarh was set aside by Revenue Appellate Authority vide its order dated 15.5.90 clearly pointing out that order dated 16.2.65 cannot be nullified in this manner which has not been challenged so far. It was clarified that bringing the land record in accordance with the direction issued by the said order dated 16.2.65 was not execution of the order and therefore, the period of limitation in correcting the land record in terms of the exising orders do not invite the application of law of limitation. The order of the Revenue Appellate Authority was affirmed by the Board of Revenue vide dated 20.10.94 giving the reference of the order dt. 16.2.65 which was not challanged

was still a valid order. The order of the Board of Revenue dated 20.10.94 and the order of Revenue Appellate Authority were subjected to the wirt peition No. 5165/94 by the present appellant, which was also dismissed on 9.1.96 holding that the order dated 14.9.87 could not have been challenged without challenging the order dated 16.2.65.

It was only after almost 21 months thereafter the petitioner moved an application for recalling the order dated 16.2.65 on the ground that earlier he had no knowledge of the order.

These facts speak volume about the petitioner's own admission that he came to know about the order dated 16.2.65 when he moved an application for recalling the order dated 14.9.87 because that order was for making land records to accord with the order dated 16.2.65. Therefore it is safe to assume that as soon as the petitioner came to know about the order dated 16.2.65, he moved an application for setting aside the order dated 14.9.87.He was litigating to safeguard his enacroachment on sanactioned way without cahllanging the order

dated 16.2.65 sanctioning the way. The petitioner did not know about the judgment of the High Court for over 20 months and that he alleged to have received the information about the judgment only through office of Assistant Collector, is incredible to believe. This clearly goes to show that the petitioner is not vigilent in pursuant of his remedies.

We are in agreement with the learned Single Judge that the petition suffers from gross unexplained laches and he has rightly exercised his discretion in not entertaining the writ petition.

The appeal therefore, fails and is hereby dismissed.

(GOPAL KRISHAN VYAS),J. **(RAJESH BALIA),J.**

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